

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO. 3:19-cv-00103-MR**

ANTORIO RICE SMARR,)	
)	
Petitioner,)	
)	
vs.)	<u>MEMORANDUM OF</u>
)	<u>DECISION AND ORDER</u>
)	
ERIK A. HOOKS, Secretary of)	
Department of Public Safety,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on the Petitioner’s “Motion for Intervention, Answer of Counterclaim, Show Cause” [Doc. 4].

Antonio Rice Smarr (the “Petitioner”) is a prisoner of the State of North Carolina. On February 2, 2000, the Petitioner was found guilty in Gaston County Superior Court of one count of second-degree murder; three counts of attempted robbery with a dangerous weapon; one count of aiding and abetting assault with a deadly weapon inflicting serious injury; and one count of conspiracy to commit robbery with a dangerous weapon. State v. Smarr, 146 N.C. App. 44, 46, 551 S.E.2d 881, 883 (2001).

The Petitioner's conviction became final on or about June 4, 2002. [Doc. 2 at 5]. The statute of limitations for the present claim then ran for 365 days until it expired on or about June 4, 2003.

On March 4, 2019, the Petitioner filed a § 2254 Petition for Writ of Habeas Corpus in this Court. [Doc. 1]. On October 5, 2020, the Court entered an Order explaining that the Petitioner's § 2254 Petition appeared to be untimely under § 2244(d)(1)(A) because it was not filed within one year of the date on which his judgment became final. [Doc. 2 at 4-5]. The Order directed the Petitioner to file a response showing how statutory or equitable tolling could apply to this case. [Id. at 5-6].

On December 3, 2020, the Petitioner filed the present "Motion for Intervention, Answer of Counterclaim, Show Cause" [Doc. 4]. The Petitioner does not address the statute of limitations issue, instead arguing that the trial court failed to give him a proper hearing before allowing him to proceed *pro se*. [Id. at 2-4].

Even if the trial court failed to properly examine the Petitioner regarding his decision to proceed *pro se*, that does not constitute grounds for tolling the statute of limitations for bringing a § 2254 petition in federal court. See 28 U.S.C. § 2244(d)(1). Despite receiving an opportunity to show why statutory or equitable tolling should apply, the Petitioner has failed to do so.

Therefore, the Court concludes that neither statutory nor equitable tolling applies here. Hill v. Braxton, 277 F.3d 701, 706 (4th Cir. 2002). Accordingly, the Petitioner's § 2254 Petition will be dismissed as untimely under § 2244(d)(1). Because the Petitioner's habeas petition will be dismissed, the Petitioner's "Motion for Intervention, Answer of Counterclaim, Show Cause" [Doc. 4] will be denied as moot.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).

ORDER

IT IS, THEREFORE, ORDERED that the Petitioner's § 2254 Petition for Writ of Habeas Corpus [Doc. 1] is hereby **DISMISSED** as untimely under § 2244(d)(1)(A).

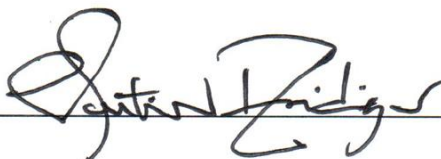
IT IS FURTHER ORDERED that the Petitioner's "Motion for Intervention, Answer of Counterclaim, Show Cause" [Doc. 4] is **DENIED** as moot.

IT IS FURTHER ORDERED that the Court declines to issue a certificate of appealability pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases.

The Clerk of Court is respectfully directed to close this case.

IT IS SO ORDERED.

Signed: January 19, 2021



Martin Reidinger
Chief United States District Judge

